

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3408 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SP BHATT

Versus

CONVENER

Appearance:

MR MS SHAH for MR SURESH M SHAH for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR BY MANKAD AGP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2000

ORAL JUDGEMENT

Present petition has been filed by the petitioner under Articles 14 and 226 of the Constitution of India. It has been contended by the petitioner that the respondents for their requirement of one post of Gujarati Typist issued a public advertisement inviting

applications for preparing select list for filling up the said post along with other posts for which a common advertisement was given pointing out the necessary requisite qualifications for the posts and the said advertisement was published on 5th August, 1984.

2. That the petitioner made an application, interview was taken and select list was prepared. That the petitioner was placed at Serial No.1 in the said select list. That inspite of the said position, the petitioner has not been appointed on the aforesaid post. The petitioner, therefore, claimed that since he has been placed at Serial No.1 in the said select list, as per the letter dt. 23th September, 1986 placed at Annexure A to the petition, the appointment should be given to him for the aforesaid post of typist.

3. Notice was issued at the initial stage and rule was issued. Thereafter, one Shri M.M.Kachhia, working as Administrative Officer looking after establishment in the Directorate of Health, Medical Services and Medical Education (Health Section) has filed affidavit at Page 13. Therein it has been contended that though the select list was prepared and the petitioner was placed at Serial No.1, the candidates placed in the select list could not be given appointment in view of the fact that the Government in its General Administration Department circular had directed not to fill up the vacancy of clerk, typist etc. until further orders as the retrenched employees of the Irrigation Department are to be absorbed first.

4. It has been further contended in the said affidavit that as per rules of the Government and as per specific condition set out in the intimation letter sent to the petitioner at Annexure : A to the petition, the petitioner has no right to be appointed on the basis of the fact that he has been selected and placed at Serial No.1 in the said select list. That the General Administration Department has made it clear that the select list for the appointment to the aforesaid posts cannot be made operative in view of the fact that there is no candidate belonging to schedule caste or schedule tribe in the said lists. That the select list of such candidates wherein candidates belonging to schedule caste/scheduled tribe are appearing who are not given employment can only be continued to be operative beyond the period of one year. That till such candidates get employment as per General Administration Department circular dt. 12th May, 1986, the said select list cannot be operated.

5. Affidavit further says that since there was not a single candidate belonging to Schedule Caste/Schedule Tribe category in the select list for the post of Gujarati Typist, the Government did not accept the proposal to continue the said select list as operative for offering the employment beyond September by General Administration Department communication dt. 13th March, 1987 as well as 30th June, 1987. That by said letter, the Government has also directed to give fresh advertisement inviting applications from such candidates. That accordingly, another advertisement was given on 5th July, 1987. It is, therefore, clarified that the SC/ST candidates available on select list for the posts of clerks continued to get employment beyond completion of one year i.e. beyond September, 1987 in view of the clear provision of Government policy in the said circular of 12th May, 1986. That the said select list in which the petitioner's name is included is no more in existence and it has already come to an end in September, 1987. Therefore the petition be dismissed.

6. I have heard Mr. M.S.Shah, learned counsel for the petitioner and Mr. B.Y.Mankad, learned Assistant Government Pleader for the State.

7. It transpires from the above position that there is no dispute that the petitioner was placed at Serial No.1. At the same time, the respondent has come out with a case that the select list has ended or expired and it is not in existence beyond September, 1987. The learned counsel for the petitioner submitted that thereafter no further select list has been prepared. Really speaking, aforesaid select list has not been brought to an end or has not expired.

8. There is no further material on record to show whether the said fact is true and whether the said select list is in existence or not. It would, therefore, be proper and just to pass the order to the effect that if the said select list is in existence then in that event the case of the petitioner may be considered by the respondents for being appointed to the post for which he has been selected. No further relief can be granted in this petition.

9. In view of the above matter, this petition is partly allowed and it is hereby directed that the case of appointment of the petitioner to the post of Gujarati Typist may be considered by the respondents, if the select list in which he stood at Serial No.1 is alive and if the select list has not been terminated or it has not

expired. It is made clear that if the select list is not alive or if it has been terminated or it has been cancelled, then there is no question of consideration of the case of the petitioner for the aforesaid appointment. To the aforesaid extent, the petitioner is allowed. Rule is made absolute to the said extent. However there shall be no order as to costs.

Date: 28/4/2000. (D.P.BUCH, J.)

ccshah